

§ 4041.43

29 CFR Ch. XL (7–1–01 Edition)

(1) Distribute plan assets pursuant to, or (except as required by this part) take any other actions to implement, the termination of the plan;

(2) Pay benefits attributable to employer contributions, other than death benefits, in any form other than as an annuity; or

(3) Purchase irrevocable commitments to provide benefits from an insurer.

(c) *Limitation on benefit payments on or after proposed termination date.* Beginning on the proposed termination date, the plan administrator must reduce benefits to the level determined under part 4022, subpart D, of this chapter.

(d) *Failure to qualify for distress termination.* In any case where the PBGC determines, pursuant to § 4041.44(c) or § 4041.46(c)(1), that the requirements for a distress termination are not satisfied—

(1) The prohibitions in paragraph (b) of this section, other than those in paragraph (b)(1), will cease to apply—

(i) Upon expiration of the period during which reconsideration may be requested under §§ 4041.44(e) and 4041.46(e) or, if earlier, at the time the plan administrator decides not to request reconsideration; or

(ii) If reconsideration is requested, upon PBGC issuance of its decision on reconsideration.

(2) Any benefits that were not paid pursuant to paragraph (c) of this section will be due and payable as of the effective date of the PBGC's determination, together with interest from the date (or dates) on which the unpaid amounts were originally due until the date on which they are paid in full at the rate or rates prescribed under § 4022.81(c)(3) of this chapter.

(e) *Effect of subsequent insufficiency.* If the plan administrator makes a finding of subsequent insufficiency for guaranteed benefits pursuant to § 4041.49(b), or the PBGC notifies the plan administrator that it has made a finding of subsequent insufficiency for guaranteed benefits pursuant to § 4041.40(d), the prohibitions in paragraph (b) of this section will apply in accordance with § 4041.49(e).

[62 FR 60428, Nov. 7, 1997, as amended at 63 FR 29355, May 29, 1998]

§ 4041.43 Notice of intent to terminate.

(a) *General rules.* (1) At least 60 days and (except with PBGC approval) no more than 90 days before the proposed termination date, the plan administrator must issue a written notice of intent to terminate to each person who is an affected party as of the proposed termination date.

(2) The plan administrator must issue the notice of intent to terminate to all affected parties other than the PBGC at or before the time he or she files the notice with the PBGC.

(3) The notice to affected parties other than the PBGC must contain all of the information specified in paragraph (b) of this section.

(4) The notice to the PBGC must be filed on PBGC Form 600, Distress Termination, Notice of Intent to Terminate, completed in accordance with the instructions thereto.

(5) In the case of a beneficiary of a deceased participant or an alternate payee, the plan administrator must issue a notice of intent to terminate promptly to any person that becomes an affected party after the proposed termination date and on or before the date a trustee is appointed for the plan pursuant to section 4042(c) of ERISA (or, in the case of a plan that distributes assets pursuant to § 4041.50, the distribution date).

(b) *Contents of notice to affected parties other than the PBGC.* The plan administrator must include in the notice of intent to terminate to each affected party other than the PBGC all of the following information:

(1) The name of the plan and of the contributing sponsor;

(2) The EIN of the contributing sponsor and the PN; if there is no EIN or PN, the notice must so state;

(3) The name, address, and telephone number of the person who may be contacted by an affected party with questions concerning the plan's termination;

(4) A statement that the plan administrator expects to terminate the plan in a distress termination on a specified proposed termination date;

(5) The cessation of accruals information in § 4041.23(b)(4);

(6) A statement as to how an affected party entitled to receive the latest updated summary plan description under section 104(b) of ERISA can obtain it;

(7) A statement of whether plan assets are sufficient to pay all guaranteed benefits or all benefit liabilities;

(8) A brief description of what benefits are guaranteed by the PBGC (*e.g.*, if only a portion of the benefits are guaranteed because of the phase-in rule, this should be explained), and a statement that participants and beneficiaries also may receive a portion of the benefits to which each is entitled under the terms of the plan in excess of guaranteed benefits; and

(9) A statement, if applicable, that benefits may be subject to reduction because of the limitations on the amounts guaranteed by the PBGC or because plan assets are insufficient to pay for full benefits (pursuant to part 4022, subparts B and D, of this chapter) and that payments in excess of the amount guaranteed by the PBGC may be recouped by the PBGC (pursuant to part 4022, subpart E, of this chapter).

(c) *Spin-off/termination transactions.* In the case of a spin-off/termination transaction (as described in § 4041.23(c)), the plan administrator must provide all participants and beneficiaries in the original plan who are also participants or beneficiaries in the ongoing plan (as of the proposed termination date) with a notice describing the transaction no later than the date on which the plan administrator completes the issuance of notices of intent to terminate under this section.

§ 4041.44 PBGC review of notice of intent to terminate.

(a) *General.* When a notice of intent to terminate is filed with it, the PBGC—

(1) Will determine whether the notice was issued in compliance with § 4041.43; and

(2) Will advise the plan administrator of its determination, in accordance with paragraph (b) or (c) of this section, no later than the proposed termination date specified in the notice.

(b) *Tentative finding of compliance.* If the PBGC determines that the issuance of the notice of intent to terminate appears to be in compliance with § 4041.43,

it will notify the plan administrator in writing that—

(1) The PBGC has made a tentative determination of compliance;

(2) The distress termination proceeding may continue; and

(3) After reviewing the distress termination notice filed pursuant to § 4041.45, the PBGC will make final, or reverse, this tentative determination.

(c) *Finding of noncompliance.* If the PBGC determines that the issuance of the notice of intent to terminate was not in compliance with § 4041.43 (except for requirements that the PBGC elects to waive under § 4041.41(b)(2)(i) with respect to the notice filed with the PBGC), the PBGC will notify the plan administrator in writing—

(1) That the PBGC has determined that the notice of intent to terminate was not properly issued; and

(2) That the proposed distress termination is null and void and the plan is an ongoing plan.

(d) *Information on need to institute section 4042 proceedings.* The PBGC may require the plan administrator to submit, within 20 days after the plan administrator's receipt of the PBGC's written request (or such other period as may be specified in such written request), any information that the PBGC determines it needs in order to decide whether to institute termination or trusteeship proceedings pursuant to section 4042 of ERISA, whenever—

(1) A notice of intent to terminate indicates that benefits currently in pay status (or that should be in pay status) are not being paid or that this is likely to occur within the 180-day period following the issuance of the notice of intent to terminate;

(2) The PBGC issues a determination under paragraph (c) of this section; or

(3) The PBGC has any reason to believe that it may be necessary or appropriate to institute proceedings under section 4042 of ERISA.

(e) *Reconsideration of finding of noncompliance.* A plan administrator may request reconsideration of the PBGC's determination of noncompliance under paragraph (c) of this section in accordance with the rules prescribed in part